

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ISAAC HENDRIX, SR., as Personal  
Representative of the Estate of ESSIE MAE  
HENDRIX, deceased,

Plaintiff,

vs.

LEON CASALS, M.D., et al.,

Defendants.

CASE NO.: 2:06 CV 265-W

**MOTION TO DISMISS PURSUANT TO RULE 54(b)**

COMES NOW the defendant, **LEON CASALS, M.D.**, and files this response to the removal of this case to Federal Court by co-defendant Merck & Company, Inc. (“Merck”).

Dr. Casals moves this Court to dismiss plaintiffs’ claims against him, thereby dismissing Dr. Casals from this lawsuit, pursuant to Federal Rules of Civil Procedure 54(b). As grounds for this motion, Dr. Casals shows unto the Court the following:

1. In Merck’s Notice of Removal, they argue that Dr. Casals has been fraudulently joined as a defendant in this lawsuit simply to defeat diversity jurisdiction. (Notice of Removal, pp. 4-10). According to Merck’s Notice of Removal: “There is complete diversity in this case because the purportedly non-diverse Physician Defendant has been fraudulently joined.” (Notice of Removal, p. 4). The Notice of Removal goes on to state that “there is no possibility that the plaintiff[s] can prove a cause of action

against the resident (non-diverse)' defendant.” (Notice of Removal, p. 4). The Notice of Removal claims that the defendant physician is fraudulently joined because the allegations in the plaintiff's Complaint are “conclusory” and “are contradicted by specific allegations that the manufacturer defendant concealed information from the general public, including healthcare providers.” (Notice of Removal, p. 4).

2. This defendant physician agrees with, adopts and incorporates by reference herein, Merck's arguments and supporting material contained in its Notice of Removal with respect to the claim that this defendant physician was fraudulently joined. Wherefore, this defendant respectfully moves that this Court enter an Order pursuant to Federal Rules of Civil Procedure 54(b) dismissing this physician defendant.

WHEREFORE, PREMISES CONSIDERED, Dr. Casals, moves that this Court find that this defendant physician was fraudulently joined and dismiss him as a defendant in this case pursuant to Federal Rules of Civil Procedure 54(b).

Respectfully Submitted;

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send electronic notification of such filing to the following:

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